

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R-1270]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board is proposing to amend Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation, which interprets the requirements of Regulation E. The proposed amendments would create an exception for certain small-dollar transactions from the requirement that terminal receipts be made available to consumers at the time of the transaction.

DATES: Comments must be received on or before **[Insert date that is 60 days after the date of publication in the Federal Register]**.

ADDRESSES: You may submit comments, identified by Docket No. R-1270, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Ky Tran-Trong or David A. Stein, Counsels, or Vivian W. Wong, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) (EFTA or Act), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of the types of transfers covered by the Act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation provide for the disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account activity statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. Further, the Act and regulation also restrict the unsolicited issuance of ATM cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)) interprets the requirements of Regulation E to facilitate compliance and provides protection from liability under Sections 915 and 916 of the EFTA for financial institutions and other persons subject to the Act. 15 U.S.C. 1693m(d)(1). The commentary is updated periodically to address significant questions that arise.

II. Background

Historically, consumers have tended to use cash to make small-dollar purchases, for example, to buy food or beverages from a vending machine or to pay for a subway fare.¹ Data from the payment card associations indicates, however, that in certain market segments, consumers are increasingly using credit and debit cards in place of cash, even

¹ According to one industry estimate, consumers spent more than \$1 trillion on transactions less than \$5 in 2003, with an average payment of \$3.72. See TowerGroup, "Making Sense from Cents: Trends in the Rebirth of Electronic Micropayments" (July 2004).

for small-dollar transactions.² This shift in consumer payment preferences in small-dollar transactions is consistent with evidence suggesting the declining use of cash as a share of all payments.³ Consumers have cited numerous reasons for using debit cards over other payment methods, such as cash or checks. These reasons include convenience, shorter checkout times, avoiding ATM fees or check printing fees, and the ability to track and record payments.⁴

Merchants, financial institutions and payment card associations have responded to the shift in consumer preferences towards non-cash methods of payment for small-dollar transactions in various ways. Payment card associations have changed their rules to enable quicker processing of transactions for both debit and credit cards. For example, these associations have waived the signature and personal identification number (PIN) authorization requirements for certain types of purchases under \$25. Moreover, to encourage merchant acceptance of payment cards, these associations have also reduced their debit and credit card interchange rates for certain small-dollar transactions.⁵ In addition, some card issuers have integrated new technologies into their products which allow consumers to swipe or wave radio frequency-enabled cards or other devices to authorize payment in “contactless” transactions. These initiatives have reduced the amount of time consumers spend at checkout, which has in turn allowed merchants to process more transactions in the same amount of time.

III. Summary of Proposed Revision

When a debit card is used to pay for a purchase at a POS terminal, Regulation E requires that a receipt setting forth transaction information about the EFT be made

² See “More and More Consumers Use Visa to Make Small Purchases,” Visa Press Release (August 24, 2006) (reporting double digit growth in the use of payment cards in the first six months of 2006 compared to the same period in 2005); “MasterCard PayPass Increases Customer Loyalty and Moves Payments Away From Cash,” Master Card Press Release (July 18, 2006). See also TowerGroup, “Anticipating Micropayment Growth” (October 2005) (indicating nearly \$3 billion in growth (up to \$13.5 billion) for transactions less than \$5 using debit and credit cards between 2003 and 2004).

³ See Geoffrey Gerdes and Jack Walton II, “Trends in the Use of Payment Instruments in the United States,” Federal Reserve Bulletin 180, 181 (Spring 2005).

⁴ See Ron Borzekowski, Elizabeth Kiser, and Shaista Ahmed, “Consumers’ Use of Debit Cards: Patterns, Preferences, and Price Response,” April 2006. Working paper, Federal Reserve Board. See also Elizabeth Klee, “Paper or Plastic? The Effect of Time on Check and Debit Card Use at Grocery Stores,” February 2006. Working paper, Federal Reserve Board (concluding that based on an analysis of grocery store scanner data, consumer preferences for debit cards over checks is significantly driven by the differences in transaction time).

⁵ See, e.g., “Visa Takes Big Steps Into Small Payments,” Visa Press Release (April 11, 2006).

available to the consumer at that time. The receipt requirement applies whenever an EFT is made at an electronic terminal, regardless of the amount of the transaction.

Board staff has received several industry inquiries asking the Board to consider eliminating the receipt requirement at POS terminals for small-dollar transactions. According to industry representatives, the receipt requirement is a significant impediment to allowing consumers to use debit cards to make small-dollar purchases due to the cost of installing, servicing, and maintaining printers at POS terminals. In addition, in some applications, such as for mass-transit, the additional time required to provide a receipt to each consumer using a debit card to pay for individual fares would add delays that would make it operationally unfeasible to allow consumers to use debit cards for such transactions.

In light of the implementation costs and other considerations and the uncertain consumer benefit from receipts for small-dollar transactions, the Board is proposing to create an exception from the terminal receipt requirement for EFTs of \$15 or less. The proposed rule would facilitate electronic transactions in circumstances where the receipt requirement is sufficiently burdensome or impractical so as to potentially deter merchants from allowing consumers to use electronic methods of payment. Moreover, it is unclear whether consumers typically request or retain receipts for small-dollar transactions at POS terminals. As further discussed in more detail in the section-by-section analysis, the Board also believes that the risks to consumers of not receiving a receipt for their transactions (and the benefit of receiving a receipt) would be minimal given the small value of the transaction. In particular, the Board notes that consumers would continue to receive a listing of each transaction on their periodic statements, regardless of the transaction amount, and would have the right to assert errors that may arise from any such transaction, provided such notice was provided within the required time frames.

IV. Section-by-Section Analysis

Section 205.9 Receipts at Electronic Terminals; Periodic Statements

Under § 205.9(a), when a consumer initiates an EFT at an electronic terminal, a receipt reflecting the transaction details must be made available to the consumer at the time of the transaction. An electronic terminal is defined as any electronic device (other than a telephone operated by a consumer) through which a consumer may initiate an EFT. Electronic terminals include, but are not limited to, POS terminals, ATM machines, and cash dispensing machines. See § 205.2(h).⁶ Proposed § 205.9(a)(2) would except EFTs of \$15 or less from the requirement that financial institutions make a terminal receipt available at the time of the transaction.

⁶ The terminal receipt requirement does not apply to transactions initiated through a telephone operated by a consumer, or to transactions initiated by a consumer “by a means analogous in function to a telephone.” Thus, the receipt requirement does not apply to Internet transactions, where a consumer uses a computer to visit a merchant’s web site to purchase goods or services. See § 205.2(h); comment 2(h)-1(ii).

The National Commission on Electronic Fund Transfers, whose recommendations provided much of the basis for the EFTA, deemed the requirement to make available terminal receipts at the time a consumer initiates an EFT at an electronic terminal necessary to provide consumers, “at a minimum, records that provide the same information and can be used in the same way as cancelled checks.”⁷ The legislative history of the Act indicates that Congress was similarly concerned about the importance of terminal receipts for EFTs as evidence of the transaction. In particular, Senate Banking Committee Reports noted that “receipts ... would give the consumer written verification of the amount, date, and type of transfer and the person paid.” S. Rep. No. 915, 95th Cong., 2d Sess. 5 (1978).⁸ Receipts may also serve to assist consumers in tracking their purchases for account management purposes.

According to industry representatives, start-up, servicing, and maintenance costs arising from the terminal receipt requirements pose a significant obstacle to the industry’s efforts to offer cashless payment options for small-dollar purchases in certain retail environments. For example, in retail environments which exclusively handle small-dollar transactions, such as vending machines or parking meters, installing and maintaining additional equipment capable of providing terminal receipts may not be cost-effective. In other circumstances, the requirement to provide receipts may be impractical, such as in the case of mass-transit systems where the time required to print a receipt for each consumer purchasing single fares with a debit card would cause delays that would significantly conflict with a transit system’s need to handle a heavy volume of transactions within short time periods. Anecdotally, industry representatives also report that in retail environments in which the transaction amount is typically low, such as convenience stores and quick-service restaurants, consumers often choose not to request or retain receipts for those transactions. Thus, in the absence of any relief from the receipt requirement, merchants may choose to forego the acceptance of debit cards entirely, thereby limiting consumer payment choices.

To facilitate the ability of consumers to use electronic payment methods in circumstances where providing receipts may not be practical or cost-effective, the Board is proposing to exercise its authority under Section 904(c) of the EFTA to create a limited exception from the terminal receipt requirement for small-dollar transactions.⁹ In weighing the appropriateness for the exception, the Board has also considered that the

⁷ National Commission on Electronic Fund Transfers, EFT in the United States: Policy Recommendations in the Public Interest 47-48 (1977).

⁸ See also S. Rep. No. 1273, 95th Cong., 2d Sess. 30 (1978); H.R. Rep. No. 1315, 95th Cong., 2d Sess. 6 (1978).

⁹ Section 904(c) of the EFTA provides that the rules issued by the Board “may contain such classifications, differentiations, or other provisions, and may provide for any adjustments and exceptions for any class of electronic fund transfers” that in the judgment of the Board are “necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion thereof, or to facilitate compliance therewith.”

consumer benefit from receiving receipts is likely to be minimal for these transactions. While receipts may be important for consumers for moderate to high value transactions, the Board believes that receipts are less significant for transactions of relatively small amounts because consumers are less likely to retain them for proof of payment or for account management purposes given the limited risk of loss to the consumer. Moreover, consumers will continue to receive a record of each transaction on monthly periodic statements.¹⁰ In the event of a double debit or incorrect EFT amount in connection with a small-dollar purchase, the consumer would retain the right to assert an error arising from that transaction with his or her financial institution. In light of these considerations, § 205.9(e) of the proposed rule would provide financial institutions an exception from the requirement to provide a receipt at the time the consumer initiates an EFT at an electronic terminal where the value of the transaction is \$15 or less. The exception would apply to all types of transfers initiated by a consumer at an electronic terminal, including signature-based and personal identification number (PIN)-based debits from the consumer's account. To simplify the rule and in light of the broad definition of EFT under the regulation, the proposed exception would also apply to deposits at ATMs or other electronic terminals of \$15 or less. See § 205.3(b)(1); comment 3(b)(1)-1(i). However, the Board anticipates that financial institutions would, for operational reasons, continue to make receipts available for ATM transactions, regardless of the amount of the transfer.

In proposing the \$15 threshold under which no terminal receipt would be required, the Board has considered a variety of factors, including the average dollar transaction amount for the various market segments for which this relief would be most useful¹¹ and the benefit to consumers from receiving a receipt in these transactions. While it appears that a threshold of \$5 or less would enable consumers to use debit cards in the vast majority of the retail environments where cashless payment options are contemplated, the Board believes a \$5 threshold would not be flexible enough to accommodate price increases that may occur over time. In addition, setting too low a threshold may impede the future acceptance of cashless methods of payments in

¹⁰ Consumers that wish to keep a contemporaneous record of their transactions could of course deduct the transaction amount promptly in their check registers or use a similar account reconciliation process.

¹¹ Vending industry data indicates that the average cost in 2005 for food and beverages sold in vending machines was about 75 cents for candy, \$1 for bottled beverages, and \$2 for frozen and refrigerated food products. Automatic Merchandiser 40-62 (August 2006). In addition, a survey of major transit systems in Boston, Chicago, New York, and Washington, D.C., indicates maximum one-way fares ranging between \$2 and \$5 for subway systems.

additional retail environments, such as for parking meters and commuter rail systems.¹² The Board believes the \$15 threshold would provide sufficient flexibility for the industry to accommodate consumer preferences for electronic forms of payment instead of cash in a variety of circumstances while ensuring that consumer protections provided by the regulation's receipt provisions would be retained for moderate to higher-dollar transactions in which consumers may have more need for evidence of payment and for error resolution purposes. Comment is requested on whether any additional consumer protections are necessary for consumers who would not receive receipts under the proposed rule. Comment is also requested on the dollar amount threshold set forth in the proposed rule.

Section 205.11 Procedures for Resolving Errors

11(a) Definition of Error

New comment 11(a)-6 would provide that the fact that an institution does not make a terminal receipt available for a transaction of \$15 or less is not a billing error for purposes of §§ 205.11(a)(1)(vi) or (vii).

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. Statement of the need for, and objectives of, the proposed rule. The Board is revising Regulation E to provide financial institutions relief from the requirement to make available terminal receipts at the time of a transaction, for EFTs of \$15 or less.

The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights. 15 U.S.C.

¹² For example, commuter one-way peak fares on the Long Island Railroad (LIRR) to or from New York's Pennsylvania Station range from just under \$6 to \$20. See LIRR fare map (effective March 1, 2005), available at www.mta.nyc.ny.us (visited October 15, 2006). Similarly, one payment card association reported that in 2004, its average ticket for fast-food purchases using debit and credit cards was just under \$12. See John Stewart, "Micropayments, Macro-Market?" Digital Transactions (May 2005).

1693. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The Act expressly states that the Board's regulations may contain "such classifications, differentiations, or other provisions, . . . as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion [of the Act], or to facilitate compliance [with the Act]." 15 U.S.C. 1693b(c). The Board believes that the revisions to Regulation E discussed above are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute. These revisions facilitate the use of electronic payment methods by consumers in circumstances where the value to the consumer of having a record of the transaction (i.e., the terminal receipt) is limited.

2. Small entities affected by the proposed rule. The requirement to make available receipts when a consumer initiates an EFT at an electronic terminal applies to all financial institutions, regardless of their size. Accordingly, the proposed exception would reduce the burden and compliance costs for small institutions by providing relief from the requirement from the duty to make terminal receipts available to consumers at the time of the transaction, where the transaction amount is small.

3. Other federal rules. The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed revisions to Regulation E.

4. Significant alternatives to the proposed revisions. The Board solicits comment about additional ways to reduce regulatory burden associated with this proposed rule.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR 205. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100-0200.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1693 et seq.). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months. The proposed rule provides relief to financial institutions from the requirement to make available terminal receipts to consumers for all EFTs of \$15 or less. Thus, for purposes of the PRA, respondents would face a one-time burden of 8 hours (one business day) to reprogram and update their systems if they wish to make use of the proposed exception. The Federal Reserve estimates that the total annual burden for this requirement for the 100 estimated respondents likely to be affected by this proposed rulemaking would be 800 hours. This would increase the total annual burden of this information collection from 83,866 hours to 84,666 hours.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimates. Using the Federal Reserve's method, the total estimated annual burden for all financial institutions subject to Regulation E, including Federal Reserve-supervised institutions, would be approximately 1,397,572 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, including retailers, ATM operators, and depository institutions (of which there are approximately 19,300) potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

Comments are invited on: a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Long, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 151-A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0200), Washington, DC 20503.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to the text of the regulation and staff commentary. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Comments are numbered to comply with **Federal Register** publication rules.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 205 and the Official Staff Commentary, as follows:

Part 205 – ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would continue to read as follows:

Authority: 15 U.S.C. 1693b.

2. Section 205.9 would be amended by revising paragraph (a) and adding a new paragraph (e) as follows:

(a) Receipts at electronic terminals. [A] ► General. Except as provided in paragraph (e) of this section, a ◀ financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt shall set forth the following information, as applicable:

(1) Amount. The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the receipt and displayed on or at the terminal.

(2) Date. The date the consumer initiates the transfer.

(3) Type. The type of transfer and the type of the consumer's account(s) to or from which funds are transferred. The type of account may be omitted if the access device used is able to access only one account at that terminal.

(4) Identification. A number or code that identifies the consumer's account or accounts, or the access device used to initiate the transfer. The number or code need not exceed four digits or letters to comply with the requirements of this paragraph (a)(4).

(5) Terminal location. The location of the terminal where the transfer is initiated, or an identification such as a code or terminal number. Except in limited circumstances where all terminals are located in the same city or state, if the location is disclosed, it shall include the city and state or foreign country and one of the following:

(i) The street address; or

(ii) A generally accepted name for the specific location; or

(iii) The name of the owner or operator of the terminal if other than the account-holding institution.

(6) Third party transfer. The name of any third party to or from whom funds are transferred.

* * * * *

► (e) Exception for receipts in small-value transfers. A financial institution is not subject to the requirement to provide a receipt under paragraph (a) of this section if the amount of the transfer is \$15 or less. ◀

* * * * *

3. In Supplement I to part 205, under § 205.11 – Procedures for Resolving Errors, under 11(a) Definition of Error, paragraph 6. would be added.

Supplement I to Part 205 – Official Staff Interpretations

* * * * *

Section 205.11 – Procedures for Resolving Errors

11(a) Definition of Error

* * * * *

► 6. Terminal receipts for transfers of \$15 or less. The fact that an institution does not make a terminal receipt available for a transfer of \$15 or less in accordance with § 205.9(e) is not an error for purposes of §§ 205.11(a)(1)(vi) or (vii). ◀

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 27, 2006.

Jennifer J. Johnson (signed)

Jennifer J. Johnson,
Secretary of the Board.